

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

WILLIE DAVIS, et al.,

Plaintiffs,

v.

MOUNTAIRE FARMS, INC., et al.,

Defendants.

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Civil Action No. 04-414-KAJ

**MOTION TO EXTEND TIME
IN WHICH TO RESPOND TO PLAINTIFFS' ANSWERING BRIEF IN OPPOSITION
TO DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

Defendants, by and through their undersigned counsel, hereby request leave from the Court to grant Defendants' counsel an extension of time in which to reply to Plaintiffs' Answering Brief in Opposition to Defendants' Motion for Partial Summary Judgment to November 10, 2006.

1. Defendants electronically filed their Motion for Partial Summary Judgment on September 15, 2006, as evidenced by the Notice of Electronic Filing.

2. Plaintiffs' Answering Brief was originally due on September 25, 2006. Plaintiffs' counsel called defense counsel's office requesting an extension and explaining that he was not aware that Defendants filed their Motion for Partial Summary Judgment. Defense counsel Ms. Scheinberg expressed some hesitation about granting an extension due to a long-time prescheduled vacation and the impact that the requested extension would have on the briefing schedule. Nevertheless, defense counsel agreed to an extension of nearly three weeks, until October 13, 2006, with the understanding that a similar extension would be agreed to accommodate defense counsel's vacation schedule.

3. On September 27, 2006, the Parties entered into a Stipulation and Order to Extend Time in which to Respond to Defendants' Motion for Partial Summary Judgment until October 13, 2006.

4. On October 12, 2006, the Parties had a teleconference with Magistrate Judge Thynga. After the call with the Court, Plaintiffs' counsel discussed the need for additional time to file his Answering Brief that was then due on October 13, 2006. Defendants' counsel agreed and reminded Plaintiffs' counsel of her pending vacation and requested an extension until November 15, 2006 to file Defendants' reply. Plaintiffs' counsel indicated that would not be a problem, especially in light of the fact that the Motion was likely not going to be ruled on by Judge Jordan before leaving for the Third Circuit.

5. Despite the parties' understanding that Plaintiffs would be allowed additional time to file their Answering Brief, Plaintiffs electronically filed their Answering Brief in Opposition to Defendants' Motion for Partial Summary Judgment on October 13, 2006 as evidenced by the Notice of Electronic Filing. Mr. Brewer and Ms. Scheinberg, who have been handling the lion's share of the work in this case, were inadvertently left off of the Court's electronic filing notification system; and local counsel was out of town from October 12 through October 15, 2006. As a result, Mr. Brewer and Ms. Scheinberg did not receive notice of the October 13 filing until October 17, 2006, and were not expecting the filing until some time during the week of October 16, 2006 or October 23, 2006. The error with the e-filing notification system has been corrected.

6. Defendants' Reply to Plaintiffs' Answering Brief in Opposition to Defendants' Motion for Partial Summary Judgment is currently due October 20, 2006, during Ms. Scheinberg's ten

(10) day vacation. Even if another attorney were to handle the Reply on behalf of Defendants, three (3) days is hardly ample time for the attorney to become acquainted with the case.

7. Defendants' counsel contacted Plaintiffs' counsel reminding him of their earlier understanding. Plaintiff's counsel refused to grant the requested extension despite the fact that Defendants had extended the same courtesy to Plaintiffs and that there was a pre-arranged agreement that Defendants' Reply would be due on November 15, 2006. Instead, Plaintiffs' counsel agreed to extend the deadline for only three days, until October 25, 2006. This extension does not address the needs of defense counsel as that date is during Ms. Scheinberg's vacation and Mr. Brewer, who was not involved in drafting the motion, has other litigation commitments. An additional three days would not provide another attorney with ample time to become appropriately acquainted with the voluminous record in this case to be able to prepare a Reply.

8. Based on the foregoing, Defendants' counsel respectfully requests that an extension of time be granted extending the date for Defendants' Reply to November 10, 2006.

Respectfully Submitted,

/s/ Matthew F. Boyer

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Attorneys for Defendants

Date: October 18, 2006

SO ORDERED this _____ day of _____, 2006

U.S. District Judge Kent A. Jordan

CERTIFICATE OF SERVICE

I hereby certify that on October 18, 2006, the foregoing Motion to Extend Time in Which to Respond to Plaintiffs' Answering Brief in Opposition to Defendants' Motion for Partial Summary Judgment was filed and served electronically with the Clerk of Court using CM/ECF and by email upon:

BY CM/ECF:

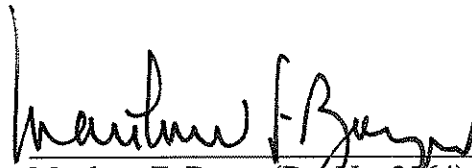
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A handwritten signature in black ink, appearing to read "Matthew F. Boyer", is written over a horizontal line.

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